

APPEAL NO. 021982
FILED SEPTEMBER 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on July 12, 2002, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth through the seventh quarters, namely, July 2, 2001, through June 30, 2002. The appellant (carrier) has appealed, challenging the probity of the claimant's documentation of the wages he was paid during the qualifying periods by his employer, a relative. The claimant's response urges that the credibility of his evidence was a matter for the hearing officer's judgment and that his evidence is sufficient to support the challenged factual findings.

DECISION

Affirmed.

We note at the outset that the tape-recorded record of this hearing was very difficult to hear, particularly the testimony of the claimant, and nearly necessitated a reversal and remand of the case for reconstruction of the record.

The claimant testified that on _____, while working as a pipe welder and fitter, he injured his low back lifting a heavy pipe; that he underwent lumbar spine fusion surgery on March 12, 1998; that a functional capacity evaluation on February 8, 2001 indicated that he could work at a medium physical demand level; that on March 20, 2001, his treating doctor released him to work with lifting restrictions; that he could no longer perform the heavy lifting involved in his welding trade, as evidenced by an April 13, 2001, medical report; and that during the qualifying periods for the quarters at issue, he worked full-time at his cousin's auto repair business, performing tasks within his restrictions such as picking up auto parts and cleaning the premises. The claimant attached various documents, including tax forms, to his Application for [SIBs] (TWCC-52) forms to document his earnings. We are satisfied that the evidence sufficiently supports the hearing officer's determinations that, during the four qualifying periods at issue, the claimant's earnings were less than 80% of his average weekly wage, that his underemployment was a direct result of the impairment from his compensable injury, that his employment was relatively equal to his ability to work, and that he made a good faith effort to obtain employment commensurate with his ability to work. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **THE NORTH RIVER INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge